

**Selected Documents from Claim File**  
**Claim No. LRF-2001-0806-01 & -02**

Claim Amt. : \$2,165.83 Initial Entry Date : 08/06/2001

Claimant : Newman Wood Systems

Property Desc. : See Comments

Property Addr. : 11908 S Powder Monkey Cove  
Riverton, UT 84065

STATUS : DENIED(NO RESPONSE TO COND'L DENIAL LETTER)

Comments Page: 001 UserID: kschwab

All of Lot 507, Copper Creek Estates, Phase 3 Subdivision  
(26-25-227-036)

## Associated Addresses

Type : Claimant Legal Counsel

DOPL # : -

Firm Nm : Ashton &amp; Braunberger

Name : Wayne H Braunberger

765 E 9000 S STE A-1

Sandy, UT 840943086

(801) 562-3200

Type : Claimant Address

DOPL # : 00-271572-5501

Firm Nm : Newman Wood Systems

Name : Paul Newman

9441 S Bagley Park Road

West Jordan, UT 840886100

( ) -

Type : Home Owner - Secondary

DOPL # : -

Firm Nm :

Name : Kimberly Norton

11908 S Powder Monkey Cove

Riverton, UT 840657738

( ) -

Type : Home Owner - Primary

DOPL # : -

Firm Nm :

Name : Spencer A Norton

11908 S Powder Monkey Cove

Riverton, UT 840657738

( ) -

Type : Non-Paying Party - Primary

DOPL # : 00-293892-5501		
Firm Nm : Castle Homes LLC		
Name :	Mike Alvey, qualifier	
	514 E 10695 S	
	Sandy, UT 840706005	
( ) -		
Type :	Original Contractor/Developer	
DOPL # : 00-293892-5501		
Firm Nm : Castle Homes LLC		
Name :	Mike Alvey, qualifier	
	514 E 10695 S	
	Sandy, UT 840706005	
( ) -		
NO DEMOGRAPHIC HISTORY FILE		
===== CLAIMS PROCESSING INFO =====		
	Date Recieved	Date Forwarded
Front Desk	08/06/2001	
Permissive Party Response	09/07/2001	DEADLINE*****
Screen C/D Letter	09/11/2001	
Comments	Page: 001	UserID: ewebster
Conditional Denial Letter sent August 7, 2001 with Response Due Date of September 7, 2001		
Reason for conditional denial:		
1. Failed to pay claim processing fee at time of claim filing		
08/16/01: Received claim processing fee		
Second Conditional Denial Letter sent September 11, 2001 with Response Due Date of October 11, 2001		
Reasons for 2nd conditional denial:		
1. Judgment is not acceptable--not signed and includes unannotated edit marks		
2. Judgment grants foreclosure		
3. No documentation of qualified services		
4. No documentation of post-judgment costs & fees		
5. Unable to determine pre-judgment costs and fees because that portion of judgment ends without setting forth an amount.		
Claim Disposition	Deny	10/30/2001
Comments	Page: 001	UserID: ewebster
Claimant did not respond to conditional denial letter until 10 days after response due date. Claimant did not request extension. Claimant's response was dated a full week after response due date. Claim is denied for failure to timely respond to conditional denial.		
Board Disposition	?	***
Page: 2		

Civil Judg/Bkcy Filing	02/12/2001
LRF App Filing	08/06/2001
Difference	175

Comments	Page: 001	UserID: ewebster
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Judgment entry date per Notice of Judgment  
Claim filing date per DOPL date stamp

Note: claim qualifies for one-year filing deadline.

===== COMPLETE APPLICATION CHECK-LIST =====

Form Submitted	Yes	08/06/2001	
Form Completed	Yes	08/16/2001	
Fee	Yes	08/16/2001	0000-39-1156 ICN
Signed Cert/Aff	Yes	08/02/2001	
Cert of Service	Yes	08/03/2001	
Demog. Questionnaire	No		

Comments	Page: 001	UserID: ewebster
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Demographic questionnaire not completed. Statute does not require demographic data as part of a complete claim.

===== SUPPORTING DOCUMENTS =====

Written Contract	Yes	Written Contract	01/17/2000
Licensing Statute	Yes	License	10/19/1995
Full Payment	Yes	Affidavit Ind/Evidence	08/10/2000
Civil Action/Bankrupt	Yes	Complaint	12/14/2000
Entitlement to Pmt.	Yes	Civil Judgment	02/12/2001
Exhaust Remedies	Yes	Bankruptcy Filing	06/05/2001

===== REQUIRED FACTUAL FINDINGS CHECK-LIST =====

Claimant Qualified Beneficiary	Yes
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Comments	Page: 001	UserID: ewebster
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Claimant is a contractor and holds license 271572-5501. License was issued February 23, 1994 and has been active & in good standing since issuance.

Claimant registered with the Fund January 1, 1995.

Written contract exists	Yes
-------------------------	-----

Comments	Page: 001	UserID: ewebster
<p>Claimant submitted complete copy of contract executed between Homeowner and Original Contractor. Contract is for purchase of a new home to be constructed on real property owned by Original Contractor. Contract was signed by all required parties January 17, 2000.</p>		
Original Contractor Licensed	Yes	
Comments	Page: 001	UserID: ewebster
<p>Original Contractor held license 293892-5501 from October 19, 1995 until surrendering it on April 24, 2001.</p>		
Owner PIF to Contractor	Yes	
Comments	Page: 001	UserID: ewebster
<p>Claimant provided complete copy of HUD settlement statement executed between Homeowner and Original Contractor. Statement is signed by all parties and certified by title officer.</p>		
Residence Own/Occ as defined	Yes	
Comments	Page: 001	UserID: ewebster
<p>Homeowner provided complete Owner-Occupied Residence affidavit. Per affidavit construction was completed August 10, 2000 and occupancy began August 12, 2000.</p>		
Residence Single Family/Duplex	Yes	
Comments	Page: 001	UserID: ewebster
<p>Per Owner-Occupied Residence affidavit.</p>		
Contract For QS	Inc	
Claimant brought Civil Action	Inc	
Exhausted Remedies	Bd	
Comments	Page: 001	UserID: ewebster
<p>Claimant did not attempt to issue Supp Order against NPP. However, on June 5, 2001 NPP was involuntarily petitioned into chapter 7 bankruptcy.</p>		
<p>Fund believes Claimant had adequate time in which to have issued Supp Order as required by UCA 38-11-204(3)(c)(iii)(A) because judgment was entered a full four months before NPP's bankruptcy. However, Claimant can no longer required to issue Order.</p>		
<p>Fund personnel believe Claimant failed to meet this requirement. However, Fund personnel also believe this issue alone would not constitute adequate justification for denial of the claim. Board is asked to present a recommendation for handling this issue.</p>		
Adequate \$ in LRF Fund	Yes	
Statutory Limit/Payment	no	
Page: 4		

Comments	Page: 001	UserID: ewebster
Total payments for incident residence to date: \$15,768.99		
Exceed Monetary Cap		
No		
Comments	Page: 001	UserID: ewebster
Not applicable		
Un-reimbursed Payments		
no		
Comments	Page: 001	UserID: ewebster
To date Fund has paid \$0 of claims on behalf of Claimant and has received \$0 of reimbursements.		
===== PAYMENT CHECKLIST =====		
Apportioned %      Claimed		
100.00		
Principal Amount	0.00	1,370.00
Pre Attorney Fees	0.00	250.00
Pre Costs	0.00	58.00
Pre Int. %	0.00	58.00
Post Attorney Fees	0.00	375.00
Post Costs	0.00	25.00
Post Int. %	0.00	0.00
Total	0.00	2,165.83
QUALIFIED SERVICES COMMENT		
Comments	Page: 001	UserID: ewebster
Total principal per judgment: \$1,270.00 (Fund personnel assume this amount corresponds to qualified services)		
Remaining \$100 is lien filing fee reclassified as a pre-judgment cost as it does not meet the definition set forth in UCA 38-11-102(18)		
PRE JUDGEMENT ATTORNEY FEE COMMENT		
Comments	Page: 001	UserID: ewebster
Per judgment		
PRE JUDGEMENT COSTS COMMENT		
PRE JUDGEMENT INTEREST COMMENT		
POST JUDGEMENT ATTORNEY COMMENT		
POST JUDGEMENT COSTS COMMENT		
POST JUDGEMENT INTEREST COMMENT		
Page: 5		

===== DISPOSITION CHECKLIST =====

CLAIM DENIED: Yes

Amount Denied: 2,165.83

Division Order Date:

Department Order Date:

Appeal Deadline to Dept.:

Appeal Deadline to Courts.:

Status on Appeal: ?

Status on Appeal - CT: ?

AG Subrogation Referral Date:

Date Judgement Assigned to DOPL:

Amount Collected in Subrogation

Costs: 0.00

Fees: 0.00

Interest: 0.00

Civil Penalty: 0.00

Interest: 0.00

Total: 0.00

Status of Subrogation:

Payment Request Date:

Finet Document Number:

Finance Transaction Date:

NPP Reimbursement Demand Date:

NPP Reimbursement Deadline Date:

Date Reimbursement Received:

Amount: 0.00

Date Investigation Report Updated:

Status of Investigation:

**BRAUNBERGER, BOUD & DRAPER, P.C.**

ATTORNEYS AT LAW

Wayne H. Braunberger

James R. Boud

Tad D. Draper

Troy K. Walker

765 East 9000 South, Suite A-1

Sandy, Utah 84094

Phone (801) 562-3200

Fax (801) 562-5250

Of Counsel

Richard I. Ashton

October 18, 2001

**RECEIVED**

OCT 22 2001

DIVISION OF OCCUPATIONAL  
& PROFESSIONAL LICENSING

W. Earl Webster, CPA

State of Utah

Dept. of Commerce

Div. of Occupational & Professional Licensing

P. O. Box 146741

Salt Lake City, UT 84114-6741

RE: Notice of Incomplete or Insufficient Claim Application  
Lien Recovery Fund Claim No. LRF-2001-0806-01  
Claimant: Newman Wood Systems  
Original Contractor: Castle Homes, LLC  
Non-Paying Party: Castle Homes, LLC  
Homeowner: Spencer & Kimberly Norton

Dear Mr. Webster:

Please grant an extension for response on this case. Enclosed are the billings from the client. I have submitted an amended Judgment, for signature by the Court, but that has not yet been received. The judge in Sandy is very busy, and it takes her longer to get these done sometimes.

I will send you a copy of the amended Judgment as it is received by the Court.

Sincerely,

BRAUNBERGER, BOUD & DRAPER, P.C.

*Wayne Braunberger*

Wayne H. Braunberger

WHB/mp

Encl.

cc: Newman Wood Systems

**BEFORE THE DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING**  
**OF THE DEPARTMENT OF COMMERCE**  
**OF THE STATE OF UTAH**

---

IN THE MATTER OF THE LIEN RECOVERY :	<b>ORDER</b>
FUND CLAIM OF <b>NEWMAN WOOD</b> :	
<b>SYSTEMS</b> ("CLAIMANT") REGARDING THE :	
CONSTRUCTION BY <b>CASTLE HOMES, LLC</b> :	Claim No. LRF-2001-0806-01
("NONPAYING PARTY") ON THE :	
RESIDENCE OF <b>SPENCER &amp; KIMBERLY</b> :	
<b>NORTON</b> :	

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Pursuant to the requirements for a disbursement from the Lien Recovery Fund set forth in UTAH CODE ANN. § 38-11-203(3) (2001) and being apprized of all relevant facts, the Director of the Division of Occupational and Professional Licensing finds that the claimant has not complied with the requirements of UTAH CODE ANN. § 38-11-204(1)(c) (2001), which reads:

To claim recovery from the fund a person shall . . . file with the division a **completed** application on a form provided by the division **accompanied by supporting documents** establishing:

- (i) that the person meets the requirements of either Subsection (3) or (6);
- (ii) that the person was a qualified beneficiary or laborer during the construction on the owner-occupied residence; and
- (iii) the basis for the claim (emphasis added).

The claim was filed with the Division on August 6, 2001 and reviewed by Division personnel on September 11, 2001. That review obviated several deficiencies in the claim in that much of the required supporting documentation had not been provided. Therefore, on September 11, 2001, the Division issued a Notice of Incomplete or Insufficient Claim Application outlining all deficiencies in the claim. That Notice provided Claimant a Response Due Date of October 11, 2001 and included the following warning:

**Failure to Provide Required Information:** If we receive the needed information, we will process your claim as expeditiously as possible. If we do not receive the needed

information, on or before the Response Due Date shown above, the claim will be denied.  
(emphasis as in original)

On October 22, 2001, the Division received Claimant's response to the Notice. That response consisted of a letter dated October 18, 2001 requesting additional time to prepare the response and approximately two-thirds of the documents requested in the Notice. As can clearly be seen, Claimant's response to the Notice *was prepared* a full week *after* the response due date and *received* by the Division *10 days late*. Prior to October 22, 2001, the Division did not receive any contact from Claimant regarding an extension of the response due date. To inform claimants regarding the possibility of extending the response deadline, the following warning was included in the Notice:

**Questions, Assistance, and Extensions:** If you have any questions, need assistance, or wish to request an extension of time to respond, please call. Be aware, extensions are not normally allowed but may be granted if extenuating circumstances justify. (emphasis as in original)

The processing of a Fund claim is not exactly like the processing of an application for licensure with the Division. However, both processes are materially analogous. Recognizing that analog, direction for treatment of late responses to Fund-related Division Notices can be found in the Division's so called "umbrella statute." Germane to the issue at hand is UTAH CODE ANN. § 58-1-301(2)(d) (2001), which provides:

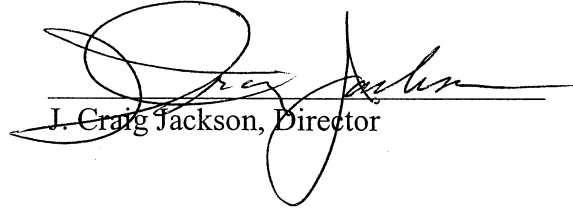
A written notice of incomplete application and conditional denial of licensure shall be provided to an applicant who submits an incomplete application. This notice shall advise the applicant that the application is incomplete and that the application **is denied, unless the applicant corrects the deficiencies within the time period specified in the notice** and otherwise meets all qualifications for licensure. (emphasis added)

As shown above, Claimant did not correct the deficiencies within the time period specified in the Notice and did not timely request an extension of time to make the corrections. As such, Claimant has not filed a complete application as required by UTAH CODE ANN. § 38-11-

204(1)(c). Therefore, Claimant has not met its burden to demonstrate qualification for payment from the Fund and as required by UTAH CODE ANN. § 63-46b-3(3)(d)(ii) the claim is denied.

WHEREFORE, the Director of the Division of Occupational and Professional Licensing orders that the above-encaptioned claim is denied.

DATED this 5<sup>th</sup> day of November, 2001.

  
J. Craig Jackson, Director

**CHALLENGE AFTER DENIAL OF CLAIM:**

Under the terms of UTAH ADMINISTRATIVE CODE, § R156-46b-202(j) (1996), this claim has been classified by the Division as an informal proceeding. Claimant may challenge the denial of the claim by filing a request for agency review. **(Procedures regarding requests for agency review are attached with Claimant's copy of this Order).**

Claim Amt. : \$1,601.54 Initial Entry Date : 08/06/2001

Claimant : Newman Wood Systems

Property Desc. : See Comments

Property Addr. : 11892 S Mother Lode Court

Riverton, UT 84065

STATUS : DENIED(NO RESPONSE TO COND'L DENIAL LETTER)

Comments Page: 001 UserID: kschwab

Lot 523, Copper Creek Estates - Phase 5

(26-25-227-051)

## Associated Addresses

Type : Claimant Legal Counsel

DOPL # : -

Firm Nm : Ashton &amp; Braunberger

Name : Wayne H Braunberger

765 E 9000 S STE A-1

Sandy, UT 840943083

(801) 562-3200

Type : Claimant Address

DOPL # : 00-271572-5501

Firm Nm : Newman Wood Systems

Name : Paul Newman, qualifier

9441 S Bagley Park Road

West Jordan, UT 840886100

(801) 280-5000

Type : Home Owner - Secondary

DOPL # : -

Firm Nm :

Name : Tiffany Gunther

11892 S Mother Lode Court

Riverton, UT 84065

( ) -

Type : Home Owner - Primary

DOPL # : -

Firm Nm :

Name : Daniel Gunther

11892 S Mother Lode Court

Riverton, UT 84065

( ) -

Type : Non-Paying Party - Primary

DOPL # : 00-293892-5501

Firm Nm : Castle Homes LLC

Name : Mike Alvey, qualifier

514 E 10695 S

Sandy, UT 840706005

( ) -

Type : Original Contractor/Developer

DOPL # : 00-293892-5501

Firm Nm : Castle Homes LLC

Name : Mike Alvey, qualifier

514 E 10695 S

Sandy, UT 840706005

( ) -

NO DEMOGRAPHIC HISTORY FILE

===== CLAIMS PROCESSING INFO =====

	Date Recieved	Date Forwarded
Front Desk	08/06/2001	
Permissive Party Response	09/07/2001	DEADLINE*****
Screen C/D Letter	09/11/2001	

Comments Page: 001 UserID: ewebster

Conditional Denial Letter sent August 7, 2001 with Response Due Date of September 7, 2001

Reason for conditional denial:

1. Failed to pay claim processing fee at time of claim filing

08/16/01: Received claim processing fee

Second Conditional Denial Letter sent September 11, 2001 with Response Due Date of October 11, 2001

Reasons for 2nd conditional denial:

1. Judgment is not acceptable--not signed and includes unannotated edit marks
2. Judgment grants foreclosure
3. No documentation of qualified services
4. No documentation of post-judgment costs & fees
5. Unable to determine pre-judgment costs and fees because that portion of judgment ends without setting forth an amount.

Claim Disposition Deny 10/30/2001

Comments Page: 001 UserID: ewebster

Claimant did not respond to conditional denial letter until 10 days after response due date. Claimant did not request extension. Claimant's response was dated a full week after response due date. Claim is denied for failure to timely respond to conditional denial.

Board Disposition ? \*\*\*

Civil Judg/Bkcy Filing	02/13/2001
LRF App Filing	08/06/2001
Difference	174

Comments	Page: 001	UserID: ewebster
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Judgment entry date per Notice of Judgment

Claim filing date per DOPL date stamp

Note: claim qualifies for one-year filing deadline

===== COMPLETE APPLICATION CHECK-LIST =====

Form Submitted	Yes	08/06/2001	
Form Completed	Yes	08/16/2001	
Fee	Yes	08/16/2001	0000-39-1176 ICN
Signed Cert/Aff	Yes	08/02/2001	
Cert of Service	Yes	08/03/2001	
Demog. Questionnaire	No		

Comments	Page: 001	UserID: ewebster
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Demographic questionnaire not completed. Statute does not require demographic data for complete claim.

===== SUPPORTING DOCUMENTS =====

Written Contract	Yes	Written Contract	02/01/2000
Licensing Statute	Yes	License	10/19/1995
Full Payment	Yes	Affidavit Ind/Evidence	07/19/2000
Civil Action/Bankrupt	Yes	Complaint	12/14/2000
Entitlement to Pmt.	Yes	Civil Judgment	02/13/2001
Exhaust Remedies	Yes	Bankruptcy Filing	06/05/2001

===== REQUIRED FACTUAL FINDINGS CHECK-LIST =====

Claimant Qualified Beneficiary	Yes
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Comments	Page: 001	UserID: ewebster
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Claimant is a contractor and holds license 271572-5501. License was issued February 23, 1994 and has been active & in good standing since issuance.

Claimant registered with the Fund January 1, 1995.

Written contract exists	Yes
-------------------------	-----

Comments	Page: 001	UserID: ewebster
<p>Claimant submitted complete copy of contract executed between Homeowner and Original Contractor. Contract is for purchase of a new home to be constructed on real property owned by Original Contractor. Contract was signed by all required parties February 1, 2000.</p>		
Original Contractor Licensed	Yes	
Comments	Page: 001	UserID: ewebster
<p>Original Contractor held license 293892-5501 from October 19, 1995 until surrendering it on April 24, 2001.</p>		
Owner PIF to Contractor	Yes	
Comments	Page: 001	UserID: ewebster
<p>Claimant provided complete copy of HUD settlement statement executed between Homeowner and Original Contractor. Statement is signed by all parties and certified by title officer.</p>		
Residence Own/Occ as defined	Yes	
Comments	Page: 001	UserID: ewebster
<p>Homeowner provided complete Owner-Occupied Residence affidavit. Per affidavit construction was completed and occupancy began July 19, 2000.</p>		
Residence Single Family/Duplex	Yes	
Comments	Page: 001	UserID: ewebster
<p>Per Owner-Occupied Residence affidavit</p>		
Contract For QS	Inc	
Claimant brought Civil Action	Inc	
Exhausted Remedies	Bd	
Comments	Page: 001	UserID: ewebster
<p>Claimant did not attempt to issue Supp Order against NPP. However, on June 5, 2001 NPP was involuntarily petitioned into chapter 7 bankruptcy.</p>		
<p>Fund believes Claimant had adequate time in which to have issued Supp Order as required by UCA 38-11-204(3)(c)(iii)(A) because judgment was entered a full four months before NPP's bankruptcy. However, Claimant can no longer be required to issue Order.</p>		
<p>Fund personnel believe Claimant failed to meet this requirement. However, Fund personnel also believe this issue alone would not constitute adequate justification for denial of the claim. Board is asked to present a recommendation for handling this issue.</p>		
Adequate \$ in LRF Fund	Yes	
Statutory Limit/Payment	no	
<p>Page: 4</p>		

Comments	Page: 001	UserID: ewebster	
Total payments on incident residence to date: \$22,277.07			
Exceed Monetary Cap			No
Comments	Page: 001	UserID: ewebster	
Not Applicable			
Un-reimbursed Payments			no
Comments	Page: 001	UserID: ewebster	
To date Fund has paid \$0 of claims on behalf of Claimant and has received \$0 of reimbursements.			
===== PAYMENT CHECKLIST =====			
		Apportioned %	Claimed
		100.00	
Principal Amount	0.00		910.00
Pre Attorney Fees	0.00		175.00
Pre Costs	0.00		58.00
Pre Int. %	0.00	0.00	58.00
Post Attorney Fees	0.00		375.00
Post Costs	0.00		25.00
Post Int. %	0.00	0.00	0.00
Total	0.00		1,601.05
QUALIFIED SERVICES COMMENT			
Comments	Page: 001	UserID: ewebster	
Total principal per judgment: \$810 (presumably qualified services)			
\$100 difference is lien filing fee reclassified as pre-judgment costs as it does not meet the definition in UCA 38-11-102(18)			
PRE JUDGEMENT ATTORNEY FEE COMMENT			
Comments	Page: 001	UserID: ewebster	
Per judgment			
PRE JUDGEMENT COSTS COMMENT			
PRE JUDGEMENT INTEREST COMMENT			
POST JUDGEMENT ATTORNEY COMMENT			
POST JUDGEMENT COSTS COMMENT			
POST JUDGEMENT INTEREST COMMENT			
Page: 5			

===== DISPOSITION CHECKLIST =====

CLAIM DENIED: Yes

Amount Denied: 1,601.54

Division Order Date:

Department Order Date:

Appeal Deadline to Dept.:

Appeal Deadline to Courts.:

Status on Appeal: ?

Status on Appeal - CT: ?

AG Subrogation Referral Date:

Date Judgement Assigned to DOPL:

Amount Collected in Subrogation

Costs: 0.00

Fees: 0.00

Interest: 0.00

Civil Penalty: 0.00

Interest: 0.00

Total: 0.00

Status of Subrogation:

Payment Request Date:

Finet Document Number:

Finance Transaction Date:

NPP Reimbursement Demand Date:

NPP Reimbursement Deadline Date:

Date Reimbursement Received:

Amount: 0.00

Date Investigation Report Updated:

Status of Investigation:

**BRAUNBERGER, BOUD & DRAPER, P.C.**

ATTORNEYS AT LAW

Wayne H. Braunberger  
James R. Boud  
Tad D. Draper  
Troy K. Walker

765 East 9000 South, Suite A-1  
Sandy, Utah 84094  
Phone (801) 562-3200  
Fax (801) 562-5250

Of Counsel  
Richard I. Ashton

October 18, 2001

W. Earl Webster, CPA  
State of Utah  
Dept. of Commerce  
Div. of Occupational & Professional Licensing  
P. O. Box 146741  
Salt Lake City, UT 84114-6741

RE: Notice of Incomplete or Insufficient Claim Application  
Lien Recovery Fund Claim No. LRF-2001-0806-02  
Claimant: Newman Wood Systems  
Original Contractor: Castle Homes, LLC  
Non-Paying Party: Castle Homes, LLC  
Homeowner: Daniel & Tiffany Gunther

Dear Mr. Webster:

Please grant an extension for response on this case. Enclosed are the billings from the client. I have submitted an amended Judgment, for signature by the Court, but that has not yet been received. The judge in Sandy is very busy, and it takes her longer to get these done sometimes.

I will send you a copy of the amended Judgment as it is received by the Court.

Sincerely,

BRAUNBERGER, BOUD & DRAPER, P.C.



Wayne H. Braunberger

WHB/mp  
Encl.  
cc: Newman Wood Systems

**BEFORE THE DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING  
OF THE DEPARTMENT OF COMMERCE  
OF THE STATE OF UTAH**

---

IN THE MATTER OF THE LIEN RECOVERY :	<b>ORDER</b>
FUND CLAIM OF <b>NEWMAN WOOD</b> :	
<b>SYSTEMS</b> ("CLAIMANT") REGARDING THE :	
CONSTRUCTION BY <b>CASTLE HOMES, LLC</b> :	Claim No. LRF-2001-0806-02
("NONPAYING PARTY") ON THE :	
RESIDENCE OF <b>DANIEL &amp; TIFFANY</b> :	
<b>GUNTHER</b> :	

---

Pursuant to the requirements for a disbursement from the Lien Recovery Fund set forth in UTAH CODE ANN. § 38-11-203(3) (2001) and being apprized of all relevant facts, the Director of the Division of Occupational and Professional Licensing finds that the claimant has not complied with the requirements of UTAH CODE ANN. § 38-11-204(1)(c) (2001), which reads:

To claim recovery from the fund a person shall . . . file with the division a **completed** application on a form provided by the division **accompanied by supporting documents** establishing:

- (i) that the person meets the requirements of either Subsection (3) or (6);
- (ii) that the person was a qualified beneficiary or laborer during the construction on the owner-occupied residence; and
- (iii) the basis for the claim (emphasis added).

The claim was filed with the Division on August 6, 2001 and reviewed by Division personnel on September 11, 2001. That review obviated several deficiencies in the claim in that much of the required supporting documentation had not been provided. Therefore, on September 11, 2001, the Division issued a Notice of Incomplete or Insufficient Claim Application outlining all deficiencies in the claim. That Notice provided Claimant a Response Due Date of October 11, 2001 and included the following warning:

**Failure to Provide Required Information:** If we receive the needed information, we will process your claim as expeditiously as possible. If we do not receive the needed

information, on or before the Response Due Date shown above, the claim will be denied.  
(emphasis as in original)

On October 22, 2001, the Division received Claimant's response to the Notice. That response consisted of a letter dated October 18, 2001 requesting additional time to prepare the response and approximately two-thirds of the documents requested in the Notice. As can clearly be seen, Claimant's response to the Notice *was prepared* a full week *after* the response due date and *received* by the Division *10 days late*. Prior to October 22, 2001, the Division did not receive any contact from Claimant regarding an extension of the response due date. To inform claimants regarding the possibility of extending the response deadline, the following warning was included in the Notice:

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The processing of a Fund claim is not exactly like the processing of an application for licensure with the Division. However, both processes are materially analogous. Recognizing that analog, direction for treatment of late responses to Fund-related Division Notices can be found in the Division's so called "umbrella statute." Germane to the issue at hand is UTAH CODE ANN. § 58-1-301(2)(d) (2001), which provides:

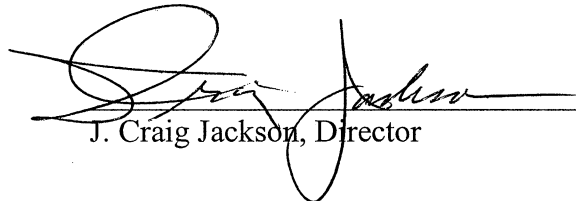
A written notice of incomplete application and conditional denial of licensure shall be provided to an applicant who submits an incomplete application. This notice shall advise the applicant that the application is incomplete and that the application **is denied, unless the applicant corrects the deficiencies within the time period specified in the notice** and otherwise meets all qualifications for licensure. (emphasis added)

As shown above, Claimant did not correct the deficiencies within the time period specified in the Notice and did not timely request an extension of time to make the corrections. As such, Claimant has not filed a complete application as required by UTAH CODE ANN. § 38-11-

204(1)(c). Therefore, Claimant has not met its burden to demonstrate qualification for payment from the Fund and as required by UTAH CODE ANN. § 63-46b-3(3)(d)(ii) the claim is denied.

WHEREFORE, the Director of the Division of Occupational and Professional Licensing orders that the above-encaptioned claim is denied.

DATED this 5<sup>th</sup> day of November, 2001.

  
J. Craig Jackson, Director

**CHALLENGE AFTER DENIAL OF CLAIM:**

Under the terms of UTAH ADMINISTRATIVE CODE, § R156-46b-202(j) (1996), this claim has been classified by the Division as an informal proceeding. Claimant may challenge the denial of the claim by filing a request for agency review. **(Procedures regarding requests for agency review are attached with Claimant's copy of this Order).**